

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JEREMY V. PINSON §
VS. § CIVIL ACTION NO. 1:15cv256
JOHN FOX, ET AL. §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Jeremy V. Pinson, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed this civil rights action. As plaintiff has not paid the required filing fee, he appears to be attempting to proceed with this lawsuit on an *in forma pauperis* basis.

The above-styled action was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Title 28 U.S.C. § 1915(g) prohibits prisoners from repeatedly filing frivolous or malicious complaints on an *in forma pauperis* basis. Section 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action [*in forma pauperis*] ... if the prisoner has, on three or more occasions ... brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Prior to the date on which he filed this lawsuit, at least three lawsuits or appeals filed by plaintiff were dismissed as frivolous or for failure to state a claim. See *Pinson v. Oliver*, 601 F. App'x 679 (10th Cir. 2015); *Pinson v. Berkebile*, 553 F. App'x 852 (10th Cir. 2014). As a result, Section 1915(g) is applicable.

As set forth above, plaintiff has had at three lawsuits or appeals dismissed as frivolous or for failure to state a claim. The allegations set forth in plaintiff's complaint do not demonstrate that he was in "imminent danger of serious physical injury" on the date he filed his complaint. Section 1915(g) therefore bars plaintiff from proceeding further with this lawsuit on an *in forma pauperis* basis.

Recommendation

This lawsuit should be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

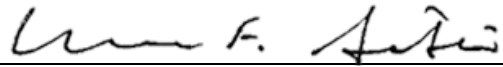
Objections

Objections must be (1) specific, (2) in writing, and (3) filed within 14 days after receiving a copy of this report. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(b) and 72(b).

A party's failure to object bars that party from (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988), and (2) appellate review, except on grounds of plain error, of unobjected-to factual findings and legal conclusions accepted by the district court, *Douglass v. United*

Serv. Auto. Ass'n., 79 F.3d 1415, (5th Cir. 1996) (*en banc*).

SIGNED this 17 day of August, 2015.

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE